

DEBORAH SENN
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STATE OF WASHINGTON



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OFFICE OF
INSURANCE COMMISSIONER

In the Matter of) No. D 98 -43
JEFFERY C. MEERKATZ,) AMENDED TO FINDINGS OF
) FACTS, CONCLUSIONS OF LAW AND
) ORDER ON HEARING
)
Licensee.)

TO: Jeffery C. Meerkatz
1304 Decatur
Spokane, WA 99205

COPY TO: Deborah Senn, Insurance Commissioner
Robert A. Harkins, Chief Deputy Insurance Commissioner
Jeffery Coopersmith, Deputy Commissioner, Legal Affairs
P. O. Box 40255
Olympia, WA 98504-0100

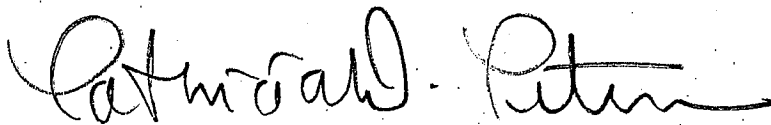
Michael E. Grant, Assistant Attorney General
Office of Attorney General
P.O. Box 40100
Olympia, WA 98504-1-0100

The sole purpose of this Amended Findings of Facts, Conclusions of Law and Order on Hearing is to correct one typographical error found in Finding of Fact No. 26. In order to correct this typographical error,

IT IS HEREBY ORDERED that the Findings of Facts, Conclusions of Law and Order on Hearing entered by the undersigned in this matter on April 26, 1999 shall read as follows:

26. Given the above facts, it is reasonable that the Insurance Commissioner's Order of Revocation, No. D 98-43, should be modified to impose a lesser penalty of suspension of his insurance agent's license from the date of entry of the Order herein until August 31, 1999, together with payment of \$5,000. This will result in the Licensee having not been able to transact insurance business for a total period of one year (revocation from August 31, 1998 until the date of this Order, then suspension imposed hereunder until August 31, 1999).

ENTERED this 17th day of May, 1999 at Olympia, Washington.

A handwritten signature in cursive script, appearing to read "Patricia D. Petersen".

PATRICIA D. PETERSEN
Chief Hearing Officer and Presiding Officer

STATE OF WASHINGTON

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Pursuant to RCW 34.05, 48.04.010 and WAC 10-08 and after notice to all interested parties and persons, the above-entitled matter came on regularly for hearing before the Insurance Commissioner for the state of Washington on January 26, 1999. Pursuant to chapter 34 RCW, all persons to be affected by the above-entitled matter were given the right to be present at such hearing during the giving of testimony, and had reasonable opportunity to inspect all documentary evidence. Jeffrey C. Meerkatz appeared pro se. The Insurance Commissioner ("Commissioner") was represented by the Attorney General and Assistant Attorney General Michael E. Grant.

NATURE OF PROCEEDING

The purpose of the hearing was to take testimony and evidence and hear arguments as to whether the Insurance Commissioner's Order Revoking License No. D 98-43 should be confirmed, set aside, or modified. Order No. D 98-43 ordered that the insurance agent's license of Jeffrey C. Meerkatz should be revoked, for reasons specified therein.

FINDINGS OF FACTS

Having considered the evidence and argument presented at the hearing, and the documents on file herein, the presiding officer designated to hear and determine this matter finds as follows:

1. The hearing was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied.
2. The Licensee is an individual who has held a life and health insurance agent's license in the state of Washington for some eight years. (In his testimony he did not recall the number of years he had been licensed.) He has represented Bankers Life and Casualty Insurance Company for approximately five years. He also owns a hair salon and is licensed to operate that hair salon. He holds no other licenses. He currently is District Manager of a masonry company. The Licensee testified, and the Commissioner agreed, that the Licensee has never had a complaint filed against him with the Insurance Commissioner, or given the Commissioner any reason for inquiry into his insurance business. Because he failed to file his request for hearing before the effective date of the Order Revoking License the Licensee has had his Washington insurance agent's license revoked, pending this final order on hearing, since August 31, 1998.
3. On December 8, 1997, the Commissioner mailed the Licensee a letter (Ex. 1a) advising the Licensee that based upon a recent Summary Order To Cease and Desist, and Revoking Exemptions under RCW 21.20.320 (1), Case No. 97-09-458, SDO 66 (A) - 97 (Ex. 8 herein), issued by the Washington State Securities Division (hereinafter called "Order to Cease and Desist") that she was opening an investigation. In this letter, she requested the Licensee's written comments regarding the allegations outlined in the Order to Cease and Desist and asked that the Licensee provide her with information as to the products sold and the number of consumers the products were sold to. The Commissioner further asked whether the consumers who purchased the securities products were clients of his (presumably insurance clients), whether he ran any advertisements for the products and for information as to whether he was licensed to sell securities products. The Commissioner sent this letter to the Licensee in order to ascertain whether there were any grounds for her to continue an investigation in this matter, because these activities might bear on the Licensee's qualifications to retain his insurance agent's license.
4. In her aforementioned December 8, 1997 letter to the Licensee, the Commissioner requested the Licensee to provide written comments to be received by her by December 29, 1997. The Commissioner specifically further advised the Licensee that RCW 48.17.475 required a prompt response by a Licensee to an inquiry of the Commissioner.
5. In response, on December 30, 1997 attorney Micaela Renee Dutson of Tigard, Oregon, representing the Licensee, telephoned the Commissioner's staff to request an extension to reply to the aforementioned December 8, 1997 letter. An extension until January 13, 1998 was granted at that time.
6. By letter dated January 13, 1998 (Ex. 2), and faxed to the Commissioner presumably on that date, attorney Dutson responded to the Commissioner. In this letter attorney Dutson advised that

she had been retained to represent the Licensee with regard to the Commissioner's aforementioned December 8, 1997 letter. Attorney Dutson further advised that before she could answer the Commissioner's questions regarding non-insurance issues, she and the Licensee first needed to know the basis of the Commissioner's jurisdiction and stated that when the Commissioner's jurisdiction had been determined then the Licensee would be willing to discuss the Cease and Desist Order with the Commissioner. Attorney Dutson further stated that the Commissioner should not consider her letter a refusal to provide her with the information she requested and asked that the Commissioner provide her with "the curtsey [sic] of a reply to this letter prior to you taking any further action on this matter."

7. By letter dated January 14, 1998 (Ex. 3), the Commissioner responded to attorney Dutson's aforementioned January 13, 1998 letter. The Commissioner advised that she was certain the attorney Dutson and the Licensee were aware of the seriousness of an Order to Cease and Desist and that, as in this case, such matters lend themselves to further scrutiny of other governmental agencies. The Commissioner further stated that the basis of the subject Cease and Desist Order filed by the Washington State Securities Division raised questions of the Commissioner regarding the Licensee's trustworthiness and competency to hold an insurance agent's license. The Commissioner cited RCW 48.17.070 concerning the qualifications of an individual to hold an insurance license and further advised that RCW 48.17.530 (l)(h) addresses the actions which can be taken by the Commissioner concerning any individual found to be incompetent and/or untrustworthy. The Commissioner further advised that the Licensee holds an insurance agent's license by privilege, and if found to be incompetent or a source of injury to the public, that privilege can be taken away, and that she needed the Licensee's statement and cooperation in providing his side of the issues stated in the subject Cease and Desist Order. Finally, the Commissioner stated that she was again requesting the Licensee to reply to her questions contained in her December 8, 1997 letter and that if the Licensee failed to provide the requested information by February 2, 1998 she would refer the case to Olympia for review and possible formal administrative action pursuant to RCW 48.17.475 and the Licensee's failure to respond to the inquiry. Again, the Commissioner advised the Licensee that RCW 48.17.475 requires a Licensee to promptly respond to inquiries of the Commissioner.

8. In response, the Licensee, through attorney Dutson, on February 2, 1998 faxed the Commissioner a letter (Ex. 4) again questioning the Commissioner's jurisdiction and failing to provide any substantive response and stating that "(I)n the event Mr. Meerkatz is found by a court of law to be involved in activity that would make him incompetent or untrustworthy,... then would be the appropriate time for your department to conduct an investigation and take action against him" but until that time the Order to Cease and Desist just remains "a story" and until the Securities Division "comes up with something like a court order adjudicating the items mentioned in the cease and desist to be securities, "this seems to be much ado about nothing." Finally, attorney Dutson stated, "when your jurisdiction has been determined, Mr. Meerkatz will be willing to discuss the Cease and Desist Order with you. I believe you are simply taking another agency's unsubstantiated claims and are trying to place Mr. Meerkatz in a position to answer to claims that have yet to be adjudicated in a court of law."

9. In response, by letter dated February 9, 1998 (Ex. 5), the Commissioner reiterated her

jurisdiction concerning her authority to investigate the questions raised in the Securities Order to Cease and Desist and again cited the appropriate statutes. She further provided attorney Dutson with details about her specific concerns as they related to the Licensee's trustworthiness. Finally, the Commissioner again requested that the Licensee provide her with answers to her questions posed in her original December 8, 1997 letter by February 23, 1998 and she restated RCW 48.17.475 which requires a prompt response of a Licensee to an inquiry of the Commissioner.

10. By letter dated February 18, 1998 (Ex.6) attorney Dutson on behalf of the licensee, responded to the Commissioner's February 9, 1998 letter by stating again that she needed to know exactly the basis of the Commissioner's assertions of jurisdiction, and indicated that she was unsure how "the RCW's [cited by the Commissioner] relating to insurance give you jurisdiction to inquire as to matters allegedly involving securities issues." Attorney Dutson further proffered several questions for the Commissioner and again refused to provide any answers or cooperation.

11. In her responses to the Commissioner, on behalf of the Licensee, attorney Dutson was incorrect in her interpretation of the clear statutes cited by the Commissioner. However, the Licensee's chosen representative still represents the Licensee. It should be noted further that in all three of Dutson's letters (exs. 2, 4, and 6) to the Commissioner she indicated that she had sent a copy to the Licensee. The statement was made by the Commissioner's witness herein that had the Licensee furnished the Commissioner with adequate answers to her questions, this case could possibly have been dropped or settled prior to hearing.

12. The fact that the Commissioner's inquiries relative to the Order to Cease and Desist involved what appears to be sales of either securities products, or possibly a non-security type of investment in promissory notes, rather than insurance products, is irrelevant. At the time of her inquiry, the Commissioner has jurisdiction to inquire into activities of the Licensee which, although not insurance products, may show him to be incompetent or untrustworthy or a source of injury and loss to the public. A conclusion of incompetency or untrustworthiness by the Commissioner could reasonably bear on the Licensee's qualifications to retain his insurance agent's license.

13. Through his attorney, the Licensee did, in fact, fail or refuse to respond promptly in writing to reasonable and legitimate inquiries of the Commissioner. Specifically, in response to the Commissioner's initial December 8, 1997 letter, an extension was requested one day after a written response was required. On January 13 the Licensee, through his attorney, timely responded to the Commissioner but the reply was unresponsive. An inquiry was mailed to the licensee on January 14, 1998 and again the February 2, 1998 timely letter sent to the Commissioner was unresponsive. Even as of the date of the hearing, the Commissioner has received no communication from the Licensee as to his position in regard to the Cease and Desist Order.

14. The Commissioner asserts, as the second basis of her Order Revoking License, that the Order to Cease and Desist was entered against the Licensee and said Order determined that he had committed violations of the securities laws such that he had shown himself to be, and was deemed by the Commissioner to be, untrustworthy or incompetent or a source of injury and loss to the

public.

15. Briefly in her aforereferenced Order to Cease and Desist the Securities Administrator asserted that the Licensee, among others, had violated the Securities Act of Washington and that his violations justified the entry of that Order to Cease and Desist. In support of her charges, the Securities Administrator made various "Tentative Findings of Fact" concerning the Licensee's dealings in the sales of investments for Capital Acquisitions, Inc. and that the Licensee was "a Washington resident, a licensed insurance agent and a salesperson for Capital Acquisitions." The Order to cease and desist contains only "Tentative Findings of Facts" and tentative conclusion of law throughout, including an assertion that the Licensee offered an investment in Capital Acquisitions, Inc. to an elderly Spokane resident by telling this individual that Capital Acquisitions was offering three-year promissory notes with 20% annual interest and were ostensibly guaranteed by a bond issued by New England International Surety, Inc. And secured by a trust deed on real estate in Kansas. Further "Tentative Findings of Facts" stated that the Licensee gave the prospective investor a set of written offering materials that further described the terms of the investment. Additionally, "Tentative Findings of Facts" stated that the licensee's promotional statements and materials contained misrepresentations and omissions, that the former president of the company was a convicted securities felon, that the Licensee was not then and has never been registered as securities salespersons or broker-dealer in Washington and that the Licensee presented a threat to the investing public. The Conclusions of Law in said Order, also only tentative by wording on page 7 therein, conclude that the Licensee violated RCW 21.20.040 by offering said securities while not registered as securities salesperson or broker-dealer in Washington, balloted RCW 21.20.010 because he made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made not misleading to investors.

16. Importantly the subject Order to Cease and Desist ended by notifying the Licensee that the Order was subject to appeal under the provisions of the Administrative Procedure Act. The Order further stated as follows:

The respondents [including the Licensee] may each make a written request for a hearing as set forth in the NOTICE AND OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this order. If a respondent fails to request a hearing within the allowed time, the Securities Administrator intends to adopt the above tentative Findings of Fact and Conclusions of Law as final and to make the Summary Order to Cease and Desist and Revoking Exemptions ... permanent as to the license and the other respondents.

17. The Licensee responded that he did, in fact, file an appeal of the Order to Cease and Desist (Ex. 9). The Securities Administrator responded that she would schedule a hearing as to other respondents, but that the hearing request made by the Licensee was not timely filed. The Securities Administrator further stated in its letter (Ex. 9) that the Licensee had not complied with its investigative subpoena, and had continued to offer and sell the subject notes in violation of its Order to Cease and Desist.

23. By his activities in regard to the Susan Broughton and Kathy Lashback (sp.) investment purchases made after the effective date of the Order to Cease and Desist, the Licensee has demonstrated himself to be, and hereby is deemed to be, incompetent or untrustworthy or a source of injury and loss to the public.

24. None of the Licensee's insurance consumers were involved in his activities which were the subject of the Order to Cease and Desist. Further, as above there have been no complaints against the Licensee in his approximately 8 years as a Washington insurance agent and there has been no prior cause for the Commissioner to inquire into his insurance or other activities.

25. The Commissioner's allegations made concerning the specific violations contained in the Order to Cease and Desist cannot be found as facts herein. As discussed above in paragraph 18, these are Tentative Findings of Facts and for some reason the Securities Administrator has not adopted them as final as to the Licensee she has apparently been entitled to do for quite some time. Also, neither party called a representative of the Securities Division to testify as a witness at hearing. If either 1) the Securities Administrator had made the Tentative Findings of Fact and Conclusions of Law as final as to this Licensee, or 2) a representative of the Securities Administrator could have presented definitive testimony at hearing, then the findings of facts and conclusions of law, and also most likely the Order herein, would be different.

26. Given the above facts, it is reasonable that the Insurance Commissioner's Order of Revocation, No. D 98-43, should be modified to impose a lesser penalty of suspension of his insurance agent's license from the date of entry of the Order herein until August 31, 1998, together with payment of \$5,000. This will result in the Licensee having not been able to transact insurance business for a total period of one year (revocation from August 31, 1998 until the date of this Order, then suspension imposed hereunder until August 31, 1999).

27. These Findings of Facts and Conclusions of Law and Order herein should all be considered as charges in any future disciplinary action which the Commissioner might take against this Licensee.

CONCLUSIONS OF LAW

1. By his activities in failing or refusing to respond promptly in writing to inquiries of the Insurance Commissioner, the Licensee violated RCW 48.17.475 and demonstrated himself to be, incompetent or untrustworthy or a source of injury and loss to the public within the meaning of RCW 48.17.530(1)(h).

2. By his activities in failing to notify Kathy Lashback (sp.) and Susan Broughton that he, Capital Acquisitions, Inc., and its affiliates were subject to an Order to Cease and Desist, and thereby allowing them to make investments in this scheme after he had been ordered by the Securities Division not to sell further investments in this scheme, the Licensee demonstrated himself to be incompetent or trustworthy or a source of injury and loss to the public within the meaning of RCW 48.17.530(1)(h).

3. The conduct found above constitutes knowing participation in the violation of the Insurance

Code or proper orders or regulations of the Commissioner within the meaning of RCW 48.17.530(1)(b).

4. Pursuant to RCW 48.17.530(1)(b) and (h), 48.17.475, and the Insurance Commissioner's Order Revoking License No. D 98-43, should be modified from a revocation of his insurance agent's license to a suspension of his license until August 31, 1999. This will result in a total of one year during which the Licensee will have had his insurance agent's license first temporarily revoked during pendency of this hearing and at this time suspended until the balance of that one year period. Further, the Licensee should pay a fine of \$5000.

ORDER

On the basis of the foregoing Findings of Facts and Conclusions of Law, to the effect that the Licensee, Jeffrey C. Meerkatz, 1) failed or refused to respond promptly in writing to inquiries of the Insurance Commissioner, in violation of RCW 48.17.475; 2) has violated provisions of the insurance code, and a proper order and regulation of the Commissioner as contemplated by RCW 48.17.530 (1) (b); and 3) has shown himself to be, and has been so deemed to be, incompetent, or untrustworthy, or a source of injury and loss to the public as contemplated by RCW 48.17.530(1)(h); and to the effect that the Commissioner's Order No. 98-43 should be modified,

IT IS HEREBY ORDERED that the Insurance Commissioner's Order No. D 98-43 shall be modified to instead impose a suspension of his license until August 31, 1999.

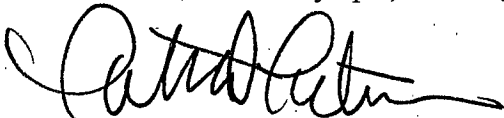
IT IS FURTHER ORDERED that the Licensee, Jeffrey C. Meerkatz, surrender his insurance agent's license to the Commissioner within 10 days of the date of entry of this Order, if it has not already been surrendered, pursuant to RCW 48.17.530 and 48.17.540.

IT IS FURTHER ORDERED that the Licensee, Jeffery C. Meerkatz, shall pay a fine of \$5000.00 to the Insurance Commissioner within 30 days of the date entry of this Order.

This Order is entered pursuant to RCW 34.05, WAC 10-08-210, RCW 48.04.010, and RCW 48.17.530. The Licensee is notified that, pursuant to RCW 34.05.514, he may appeal this Order to the Superior Court within the time limits specified in title 34 RCW.

IT IS FURTHER ORDERED that the Commissioner may use the facts and conclusions stated herein in any future disciplinary action she may take against this Licensee.

This Order is entered at Olympia, Washington, this 26th day of April, 1999.



PATRICIA D. PETERSEN
Chief Hearing Officer and Presiding Officer